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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 03rd August, 2017

\+ MAC.APP. 396/2016 and CM APPL.17195/2016 (stay)

NEW INDIA ASSURANCE COMPANY LIMITED
….. Appellant
Through: Mr. Ravinder Singh, Adv.

Versus

KANHIYA JHA & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv. WITH Ms. Shalini, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

<u>JUDGMENT (ORAL)</u>

1. The first respondent, then 29 years old, earning his livelihood as a book binder in a private factory, suffered injuries in a motor vehicular accident that occurred on 09.10.2009, involving negligent driving of a vehicle described as Rural Transport Vehicle (RTV) bearing registration No.DL-1VA-1583, which was concededly insured against third part risk with the appellant insurance company for the period in question.

2. On his claim petition (Suit No.165/2010), the Motor Accident Claims Tribunal (the tribunal) held inquiry and by judgment dated 14.03.2016, while upholding the claim for compensation on the

principle of fault liability, awarded compensation in the sum of Rs.9,12,073/- with interest @ 9% per annum in his favour, directing the insurance company to pay, the said award inclusive of Rs.6,30,207/- towards loss of future earnings, this on the basis of assessment that he had suffered from functional disability to the extent of fifty percent (50%), the minimum wages of a semi-skilled worker (Rs.4119/- per month) having been assumed as notional income, in absence of formal proof and after addition of element of future prospects of increase to the extent of 50%, the multiplier of 17 having been applied.

3. The insurer, by the appeal at hand, questions the assessment of functional disability, the adoption of wages of a semi-skilled worker and the element of future prospects of increase having been factored in.

4. The first two contentions must be rejected.

5. The evidence showed that the claimant suffered from *dementia* due to damage to the brain, his disability having been assessed by medical board to be to the extent of fifty per cent (50%). The conclusion of the tribunal, therefore, cannot be faulted. The unimpeachable evidence clearly showed that the claimant was earning his livelihood as a book binder. In these circumstances, it is not fair on the part of the insurer to seek calculation on the basis of wages of an unskilled worker.

6. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr*., (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC 166.

7. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

8. Since formal proof of regular employment and progressive rise in income was not adduced, the element of future prospects will have to be kept out. Thus, the loss of future earnings due to disability are recomputed as (4119 x 50/100 x 12 x 17) Rs.4,20,138/-. This would

mean, the award under the said head is to be reduced by (6,30,207/- - 4,20,138/-) Rs.2,10,069/-. The award is therefore, modified as (9,12,073/- - 2,10,069/-) Rs.7,02,004/- rounded off to Rs.7,03,000/-. It shall carry interest as levied by the tribunal.

9. By order dated 09.05.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest and forty percent (40%) out of the deposited amount was allowed to be released. The tribunal shall re-calculate the amount as per modified award and release the balance to the claimant, refunding the excess to the appellant.

10. Statutory amount shall also be refunded to the appellant insurance company.

11. The appeal along with pending application stands disposed of in above terms.

R.K.GAUBA, J.

AUGUST 03, 2017
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